

JUDICIAL PRACTICES AND PROCEDURES

BANKRUPTCY JUDGE DIANE WEISS SIGMUND

Judge Sigmund received a B.S. from Pennsylvania State University and a J.D. from Temple University School of Law. From 1976 to 1993, she was in private practice in Philadelphia. Judge Sigmund was appointed United States Bankruptcy Judge for the Eastern District of Pennsylvania on October 29, 1993.

PRELIMINARY GENERAL MATTERS

1. *Correspondence With the Court*

Judge Sigmund discourages correspondence from counsel to the Court, and will not consider correspondence that should properly be the subject of motion practice. Counsel should not, by letter, raise or answer substantive issues or seek advice from the Court.

2. *Communications With Law Clerk*

Judge Sigmund does not permit her law clerk to provide legal advice, to discuss legal issues, or to schedule matters. The scheduling of trials, hearings and most conferences is the responsibility of Judge Sigmund's Courtroom Deputy.

3. *Telephone Conferences and Use of Facsimile Machines*

Judge Sigmund will initiate telephone conferences when the issues warrant. A request for a telephone conference will generally not be granted in the absence of a filed pleading and should be made only under special circumstances. She does not accept pleadings, letters, etc. sent by facsimile. The Chambers fax number may be provided at the Judge's initiation where circumstances warrant expedited delivery of a document.

4. *Pro Hac Vice Admissions*

Written requests for admission *pro hac vice* shall be submitted in accordance with Local Bankruptcy Rule 2090-1(c). Oral motions may be made in open court at the time of the hearing or trial.

5. *Chambers Copies of Filed Papers*

Judge Sigmund prefers that no chambers copies of pleadings or memoranda be submitted unless she specifically requests copies or the matter is expedited.

LITIGATION GENERALLY

1. *Scheduling Hearings*

Judge Sigmund conducts hearings in Chapter 7 and 11 cases on Mondays and Tuesdays; Chapter 13 hearings are held on Thursday. Consistent with Local Rule 5070-1, parties must contact Judge Sigmund's Courtroom Deputy to obtain the actual hearing date. A recorded message, updated weekly, will advise parties of the actual date that the matter may be scheduled. If a party files a motion without a notice of hearing consistent with the Local Rules, it will be referred to the Judge who will dismiss the motion without prejudice.

2. *Continuances and Extensions*

a. *General Policy*

If *all* parties in interest agree, requests for a continuance of motions will usually be granted and can be arranged by telephone through the Courtroom Deputy, unless the hearing has been specially listed by the Court, or unless multiple continuances have already been granted. Trial dates may be continued only in exceptional circumstances by motion to and order of the Court. Requests for extensions of filing deadlines must be made by written application unless made during a hearing.

b. *Need for Filing Formal Stipulation or Motion*

If all parties in interest will not agree to a postponement, or if the matter has been specially listed or has already been postponed more than twice, a written request, or an oral request at the hearing, will be required. A postponement will only be granted if statutorily permissible, if it is genuinely necessary and if the delay is unlikely to cause prejudice.

c. *Need for Court Appearance*

A court appearance will be required when a postponement cannot be obtained through communication with the Courtroom Deputy.

3. *Proposed Findings of Fact and Conclusions of Law*

a. *Contested Matters*

Judge Sigmund does not require proposed findings and conclusions unless she so requests at the conclusion of the hearing, or unless the parties so request at that time.

b. Adversary Proceedings

Judge Sigmund does not require proposed findings and conclusions unless she so requests at the conclusion of the trial. If the parties choose to submit them, they should be submitted with the trial memorandum.

4. Reading of Material Into the Record

Judge Sigmund will usually not permit the reading of substantial material into the record.

5. Settlements

a. General Approach

Judge Sigmund will generally not become involved in settlement discussions.

b. Referral of Settlement Negotiations to Another Bankruptcy Judge

When all parties in interest so request, and mediation is either inappropriate, a request for a settlement conference with another Bankruptcy Judge will be entertained.

c. Need for Court Appearance

To the extent court approval of any settlement is sought, the provisions of Fed. R. Bankr. P. 9019 must be followed, where applicable. An objection to a settlement motion will require a court appearance.

CONTESTED MATTER PRACTICE AND PROCEDURE

1. Filing Memoranda of Law Briefs

a. Before Hearing

Memoranda are required only if Judge Sigmund has requested. Otherwise, the parties may file memoranda if they so choose.

b. After Hearing

Memoranda are necessary only if a briefing schedule has been established at the conclusion of the hearing. If a party desires to submit a post-hearing memorandum, that request will normally be approved provided the submission does not unnecessarily delay resolution of the matter.

c. Reply and Surreply Memoranda/Briefs

The intent of a party to file a reply memorandum will usually be determined at the conclusion of the hearing. Surreply memorandum will rarely be included in a post-hearing briefing schedule.

2. Scheduling of Expedited Hearings

A request for an expedited hearing should conform with Local Bankruptcy Rule 5070-1. If granted, the Courtroom Deputy will inform movant's counsel of the hearing date, the parties upon whom movant's counsel should provide notice, and the deadline for providing service to other parties in interest. The moving party should suggest a date for the hearing. If possible, the moving party should provide the Court with a list of several hearing dates acceptable to all parties in interest. When requesting an expedited hearing [on less than 48 hours], the moving party should have already served all other interested parties with the underlying motion by facsimile, hand delivery or overnight mail. Courtesy copies of expedited motions should be hand delivered to Chambers. Expedited hearings are the exception and should only be sought in exigent circumstances, e.g. use of cash collateral, sale of perishable or rapidly depreciating property, relief from stay to recover uninsured collateral.

3. Rule 52(c) Motions

Such motions are permitted under Fed. R. Bankr. P. 7052 and 9014.

4. Examination of Witnesses or Argument by More Than One Attorney

Judge Sigmund will permit more than one attorney for a party to examine different witnesses or argue different points of law in complex matters.

5. Examination of Witnesses Beyond Redirect and Recross

Judge Sigmund will rarely permit the examination of a witness after redirect and recross.

6. Presentation of Evidence

a. Use of Rule 43(e) Affidavits

Judge Sigmund does not use affidavits in lieu of testimony in contested matters unless the parties so agree. However, she may suggest in certain instances that an expert appraiser's written report serve in lieu of direct examination, where the report has been

served upon opposing parties prior to the hearing and where the expert appraiser is available for cross-examination and redirect examination. *See In re Adair*, 965 F.2d 777 (9th Cir.1992).

b. Marking of Exhibits and Number of Copies

Exhibits should be premarked and exchanged with opposing counsel prior to the hearing. Counsel need the original exhibit for the witness and should have a copy of the exhibit for every other party present and the Court. Where the exhibits are particularly numerous, a binder and index may facilitate the trial. If any party objects to the Court viewing exhibits or a particular exhibit during the trial, the Court will refrain from doing so unless and until it is admitted into evidence.

c. Offering Exhibits in Evidence

Exhibits should be offered in evidence at the conclusion of the party's case-in-chief.

d. Need for Presentation of Evidence if Uncontested

If the moving party must demonstrate "cause" for relief, or if the moving party requests that findings be made (*e.g.*, as in section 363 motions), evidence may be required even if the motion is uncontested.

ADVERSARY PROCEEDINGS

A Pretrial Order is entered in all adversary proceedings and certain contested matters. Counsel who believe that a contested matter would benefit from the Court's pretrial procedure, including a special listing where testimony is expected to be protracted, are requested to advise Judge Sigmund by letter. A copy of the Court's typical form Pretrial Order is attached.

1. Discovery Matters

a. Length of Discovery Period and Extensions

The Pretrial Order will be entered, after the pleadings are joined, establishing, *inter alia*, discovery deadlines and setting dates for submission of a joint pretrial statement and pretrial hearing. These deadlines may be extended due to subsequent developments in the case. If all parties agree and the extension does not affect the trial date, a stipulation may be filed. If all parties do not agree and/or the trial date is affected, a motion will be required. The Court may decide the motion on the papers, schedule a conference call or set the matter down for a hearing.

b. Discovery Conferences and Dispute Resolution

In most instances, discovery disputes will be resolved upon written motion after a hearing or a conference call initiated by the Court. Local B.R. 7026-1(c) may be invoked in appropriate circumstances to obviate a hearing. In limited situations, discovery disputes that arise during depositions may be resolved by telephone conference. A request for such a conference should be made to Judge Sigmund's law clerk.

c. Confidentiality Agreements

Judge Sigmund will only approve confidentiality agreements in those extremely narrow circumstances permitted by Section 107 of the Bankruptcy Code and by federal common law. E.g., *Pansy v. Ottaway Newspapers, Inc.*, 23 F.3d 772 (3d Cir.1994).

d. Expert Witnesses

Judge Sigmund will require that expert witnesses be identified in the joint pretrial statement along with a brief summary of the testimony the expert is likely to present at trial. In addition, Fed. R. Bankr. P. 7026 incorporates Fed. R. Civ. P. 26(a)(2) and (b)(4).

2. Pretrial Conferences

Judge Sigmund will schedule a pretrial conference in adversary proceedings, and in appropriate contested matters. The date and time of the conference will be fixed by the Pretrial Order entered shortly after all pleadings are filed. Non-local counsel may request to appear by telephone by contacting Judge Sigmund's Courtroom Deputy in advance of the conference.

3. Joint Pretrial Statement

The parties are required to file a joint pretrial statement in accordance with the Pretrial Order.

4. Filing of Memoranda and Briefs

a. Pretrial

Each party may file a trial memorandum with the Clerk of the Court provided it is served on opposing counsel and a copy is transmitted to Chambers five (5) days prior to the trial date.

b. Post-Trial

If a party desires to submit a post-trial memorandum, that request will generally be approved. The schedule for such briefing will be established at the conclusion of the trial. Surreply memorandum will rarely be included in a post-trial briefing schedule.

5. Continuance of Trial

The trial may be continued only in exceptional circumstances by motion to and order of the Court. Counsel are urged to make such motions as soon as they become aware of the circumstances and well in advance of trial so that the Court may schedule another matter in the time reserved for the specially listed adversary proceeding.

6. Mediation

The Pretrial Order will ask counsel to consider participation in the mediation program and unless it is then determined that mediation would not be appropriate in such case, will require that the parties inform her in writing whether they will agree to participate in mediation. If all parties agree, a mediator will be assigned. Mediation will not suspend any of the deadlines established in the Pretrial Order.

ARBITRATION

1. General Approach to Arbitration Cases

Proceedings will be assigned to compulsory arbitration in accordance with Local Bankruptcy Rule 9019.2.

2. Scheduling of Trial De Novo From Arbitration

Once a trial *de novo* is demanded, Judge Sigmund will usually issue an order directing the parties to file a joint pretrial statement within 14 days, and a trial date will be set for the first available date thereafter.

TRIAL PROCEDURE

1. Scheduling of Cases

Proceedings will usually be scheduled for trial at a pretrial conference.

2. *Matters Involving Out-of-Town Parties or Witnesses*

Judge Sigmund will attempt to accommodate out-of-town parties or witnesses when scheduling trials. Counsel are requested to make the Court aware of such circumstances at the pretrial conference.

3. *Side Bars*

Side-bar conferences may be sought when necessary.

4. *In Limine Motions*

So as not to delay trial, a deadline for *in limine* motions will be established at the pretrial hearing.

5. *Opening Statements and Summations*

Generally, no time limits are placed on opening statements or summations by counsel.

6. *Examination of Witnesses Out of Sequence*

Judge Sigmund will permit counsel to examine witnesses out of turn at the request of all parties or for the legitimate convenience of the witnesses.

7. *Video and Videotaped Testimony*

Judge Sigmund will permit the use of videotaped testimony to the extent agreed to by all parties or as allowed by the Federal Rules of Bankruptcy Procedure. Arrangements to have equipment set up in the courtroom and/or cleared through security should be done in advance by contacting her Courtroom Deputy.

INJUNCTIONS

1. *Scheduling and Expedited Discovery*

Hearings on motions for temporary restraining orders or preliminary injunctions are scheduled in the same manner as requests for expedited hearings in contested matters. Requests for expedited discovery should be filed and served upon opposing parties. Courtesy copies of all documents seeking expedited relief should be sent to Chambers. The requests will be determined summarily after opposing parties have had a reasonable opportunity to respond.

2. *Proposed Findings of Fact and Conclusions of Law*

Judge Sigmund does not require such submissions unless the parties are informed otherwise.

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re	:	Chapter
	:	
	:	Bankruptcy No.
	:	
Debtor.	:	

Plaintiff,	:	Adversary No.
	:	
v.	:	
	:	
	:	
Defendant.	:	

PRETRIAL ORDER

AND NOW, this day of , 199 , it is hereby **ORDERED** that:

1. On or before , the parties shall submit to chambers a **joint statement** whether they would consent to participate in the court-annexed pilot mediation program. If a party declines to so participate, he/she shall state a reason for such declination.

Please note that participation in mediation shall not suspend the parties' obligations or the dates of required performance hereunder;

2. All **discovery** shall be completed on or before _____;

3. All **motions** shall be filed on or before _____;

4. On or before _____, the parties shall file a **joint pretrial statement** with the Clerk of the Court and serve a copy on chambers. The joint pretrial statement shall be signed by all counsel. It is the obligation of the plaintiff's counsel to initiate the procedures for the preparation, filing and delivery to chambers of the joint pretrial statement. Counsel are expected to make a diligent effort to prepare a proposed pretrial statement in which will be noted all of the issues on which the parties agree and all of those issues on which they disagree. The proposed pretrial statement shall govern the conduct of the trial and shall supersede all prior pleadings in the case. Amendments will be allowed only in exceptional circumstances with permission of the Court and to prevent manifest injustice. Failure of any party to timely file the pretrial statement may result in the imposition of sanctions by the Court, including dismissal or judgment for the opposing party where appropriate.

The joint pretrial statement shall be in the following form:

- I. Basis of jurisdiction. (including a statement whether this matter is core or non-core). If the matter is non-core, the parties shall state whether they consent to the court's entry of a final order pursuant to 28 U.S.C. § 157(c)(2). If the parties disagree, they shall each cite to relevant authority to support their positions.
- II. Statement of uncontested facts.
- III. Statements of facts which are in dispute. (No facts should be disputed unless opposing counsel expects to present contrary evidence on the point at trial, or genuinely challenges the fact on credibility grounds.)

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- IV. Damages or other relief. A statement of damages claimed or relief sought. A party seeking damages shall list each item claimed under a separate descriptive heading, shall provide a detailed description of each item and state the amount of damages claimed. A party seeking relief other than damages shall list the exact form of relief sought with precise designations of persons, parties, places and things expected to be included in any order providing relief.
- V. Legal issues presented and the constitutional, statutory, regulatory and decisional authorities relied upon. (Counsel should include a brief statement regarding which party has the burden of proof on each legal issue.)
- VI. Witnesses listed in the order they will be called along with a brief statement of the evidence the witness will give. Any witness expected to be called as an expert shall be so listed along with a statement of the subject matter to which the expert will testify. Any and all objections to any witnesses shall be listed under the name of the witness. Objections not listed on the joint trial memorandum will not be allowed at trial.
- VII. A list of all exhibits to be offered into evidence which shall be serially numbered and physically marked before trial in accordance with the schedule. Any and all objections to any of the exhibits shall be listed, specifying the nature thereof, under the exhibit. Exhibits to which objections are not listed shall be admitted at trial and objections not listed on the joint pretrial statement will not be allowed at trial.
- VIII. A list of each discovery item and trial deposition to be offered into evidence. (Counsel shall designate by page portion of deposition testimony and by number the interrogatories which shall be offered in evidence at trial.)
- IX. Estimated trial time.
- X. A certification that the parties have attempted good faith settlement discussions without success.

5. A mandatory final pretrial/settlement conference will be held on _____ **at** _____

_____ in the Robert N.C. Nix, Sr. Federal Courthouse, 2nd flr., 900 Market Street,

Courtroom #3, Philadelphia, Pennsylvania 19107.

6. If the adversary proceeding is not resolved prior to the conclusion of the conference, the adversary proceeding shall be set down for trial at the Court's first available date. Each party may file a Trial Memorandum with the Clerk of the Court provided that it is served on the opposing party and a copy is delivered to Chambers five (5) days prior to the date of the trial. The trial may be continued only in exceptional circumstances with the permission of the Court.

United States Bankruptcy Judge

Copies to: